



Office of the Attorney General

State of Texas
May 29, 1992

DAN MORALES
ATTORNEY GENERAL

Mr. Charles Karakashian, Jr.
Assistant General Counsel
Texas Department of Public Safety
Box 4087
Austin, Texas 78773-0001

OR92-283

Dear Mr. Karakashian:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 15826.

You have received a request for information relating to a complaint filed against a Department of Public Safety ("DPS") trooper. Specifically, the requestor seeks "copies of all reports pertaining to the complaint [she] filed against [a] DPS Trooper stationed in Seymour, Texas" in relation to an incident that occurred October 27, 1990. Section 7(a) of the Open Records Act requires a governmental body to release requested information or to request a decision from the attorney general within ten days of receiving a request for information the governmental body wishes to withhold. You received the request for information under the Open Records Act on April 13, 1992. We received your request for a decision in a letter postmarked April 28, 1992. Consequently, you failed to request a decision within the ten days required by section 7(a) of the act.

When a governmental body fails to request a decision within ten days of receiving a request for information, the information at issue is presumed public. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling reason to withhold the information to overcome this presumption. *See id.* Normally, the presumption of openness can be overcome only by a compelling demonstration that the information should not be released to the public, *i.e.*, that the information is deemed confidential by some other source of law or that third party interests are at stake. Open Records

Decision No. 150 (1977); *see also* Open Records Decision No. 586 (1991) (law enforcement interest of third party may be compelling). You have submitted to us for review five documents responsive to the request (Exhibits B-F). You advise us that Exhibits E and F will be made available to the requestor. You claim, however, that Exhibits B, C, and D are excepted from required public disclosure by sections 3(a)(7), 3(a)(8), and 3(a)(11) and by third-party privacy interests as incorporated into the Open Records Act by sections 3(a)(1) and 3(a)(2).

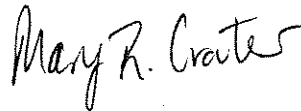
Information may be withheld from required public disclosure under common-law privacy if it meets the criteria articulated for section 3(a)(1) of the act by the Texas Supreme Court in *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Section 3(a)(2) protects personnel file information if its release would cause an invasion of privacy under the same test. *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.); *see also* Open Records Decision No. 441 (1986). Under the *Industrial Foundation* case, information may be withheld on common-law privacy grounds only if it is highly intimate or embarrassing and is of no legitimate concern to the public. The test for constitutional privacy, as incorporated into section 3(a)(1), involves a balancing of the individual's privacy interests against the public's need to know information of public concern. *Id.* The constitutional right of privacy protects information relating to marriage, procreation, contraception, family relationships, and child rearing and education. Open Records Decision No. 447 (1986) at 4. The public may have a legitimate interest in the conduct of off-duty police officers. Open Records Decision No. 484 (1987).

We have examined the information submitted to us for review. Exhibits B, C, and D contain information relating to the conduct of a DPS trooper and his son. We conclude that some of the information in these exhibits is of an intimate and embarrassing nature. We also conclude that information about the trooper's conduct is of legitimate public concern because it reflects on alleged misconduct by a public official, even though the DPS trooper's conduct was in no way related to any official DPS business. The public, however, has no legitimate interest in information about the trooper's son. Accordingly, all of Exhibit D and portions of Exhibits B and C which relate to the trooper's son may be withheld from required public disclosure under section 3(a)(1) of the Open Records Act. For your convenience, we have marked the information which must be withheld from required public disclosure. Because they implicate no other source of law or third-party interests, sections 3(a)(7) and 3(a)(11) are waived with regard to the

remainder of the requested information.¹ Accordingly, the remaining information must be released.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR92-283.

Yours very truly,



Mary R. Crouter
Assistant Attorney General
Opinion Committee

MRC/GK/lmm

Ref.: ID# 15826

cc: Ms. Barbie Weckar Hovden
900 North Browning
Seymour, Texas 76380

¹You also assert that portions of Exhibit D are excepted from required public disclosure by section 3(a)(8), the law enforcement exception. Because we conclude that Exhibit D must be withheld under section 3(a)(1), however, we need not address the applicability of section 3(a)(8) at this time.